

STATE OF MICHIGAN
COURT OF APPEALS

LILLIAN KREBS, MARK KREBS, FRED
KREBS and KREBSVIEW FARMS,

UNPUBLISHED
August 15, 2006

Plaintiffs-Appellees,

v

WILLIAM R. NYGREN and SALLY A.
NYGREN,

No. 258813
Ingham Circuit Court
LC No. 03-000807-CK

Defendants-Appellees,

and

SECURA INSURANCE,

Defendant-Appellant.

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendant Secura Insurance (Secura) appeals as of right from the order granting summary disposition in favor of plaintiffs and defendants William and Sally Nygren (the Nygrens) under MCR 2.116(C)(10) and denying summary disposition for Secura. We reverse and remand for entry of declaratory judgment in favor of Secura.

This case arises out of an accident involving plaintiffs' 1972 International Harvester utility truck, which was outfitted with a boom and auger. Defendant William Nygren suffered a spinal injury when he was struck by the utility truck's auger while attempting to move a welder using the utility truck's boom. In a separate lawsuit, the Nygrens sued plaintiffs for failing to properly maintain the utility truck. After Secura denied plaintiffs' request for liability coverage under their farm insurance policy, plaintiffs commenced the present declaratory action. The trial court determined that plaintiffs were entitled to coverage under their policy. Secura now appeals as of right.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). In addition, interpretation of a contract is a question of law reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

An insurance policy is merely a contract between the parties. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 471; 688 NW2d 523 (2004). Generally, the purpose of contract interpretation is to enforce the parties' intent, and if policy language is unambiguous, interpretation is limited to the actual words used. *Burkhardt*, *supra* at 656. Accordingly, a clear contract must be enforced according to its terms. *Id.* This Court gives "contractual language its plain and ordinary meaning, avoiding technical and constrained constructions." *English*, *supra* at 471. In determining the ordinary meaning of a term undefined by a contract, a court may refer to a dictionary. *Id.* at 472.

Secura argues on appeal that the trial court erred because the first motor vehicle exclusion exception does not apply. We agree.

Under the farm policy, Secura is generally not required to provide personal injury coverage if an injury arises out of the ownership, maintenance, use, or loading or unloading of a motor vehicle. Because the underlying tort claim is premised on the Krebs' failure to properly maintain the boom and auger on the utility truck, the motor vehicle exclusion applies. However, the policy contains two relevant exceptions to the motor vehicle exclusion. Under the first exception, the motor vehicle exclusion will not apply to:

- (1) the following except while being towed by or carried on a motorized land conveyance designed for use on public roads:
 - (a) utility, camp, boat, or home trailers,
 - (b) farm tractors, crawlers, implements or machines designed for use:
 - i. principally off public roads; and
 - ii. for cultivating or harvesting.

Under this language, the motor vehicle exclusion will not apply and Secura will be responsible for the provision of personal injury coverage if the injury was caused by (1) an implement or machine (2) designed for use (a) principally off public roads *and* (b) for cultivating or harvesting. Consequently, the motor vehicle exclusion will not apply if the utility truck involved in the accident was designed for use principally off public roads and was designed for use for cultivating or harvesting.

Although the utility truck is clearly a machine or implement and arguably was designed for use principally off public roads, it cannot be said to have been designed for use "for cultivating or harvesting." The ordinary meaning of "to cultivate" is to "prepare and work on (land) in order to raise crops; till;" and the ordinary meaning of "to harvest" is "the gathering of crops." *Random House Webster's College Dictionary* (1992). There is no evidence that the utility truck was actually designed to prepare the land for crops or gather crops. Instead, its description and actual use indicates that it was a multi-purpose utility truck useful for moving heavy items, digging post holes, and serving as a mobile shop. Although these uses clearly support the general operations of a farm, the uses do not actually involve cultivating or harvesting. Consequently, this exception to the motor vehicle exclusion does not apply.

Next, appellees argue that the utility truck was subject to the motor vehicle registration exception under the policy. We disagree.

The farm policy states that the motor vehicle exclusion also does not apply to:

(4) a vehicle or conveyance not subject to motor vehicle registration which is designed mainly:

(a) to service residential premises;

(b) to assist the handicap;

or which is in dead storage on or is used exclusively on the *insured* premises. [Emphasis in policy.]

Thus, under this exception, Secura remains responsible for the provision of personal injury coverage if the injury is caused by a vehicle (1) not subject to motor vehicle registration (2) that is used exclusively on the “insured premises.” Both factors must be satisfied in order to meet the requirements of this section. At his deposition, William testified that, with permission, he had driven to and used the utility truck at residential construction sites. Therefore, the utility truck was not used exclusively on the insured premises and the motor vehicle registration exception does not apply.¹

Reversed and remanded for entry of declaratory judgment in favor of Secura. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

¹ Because of our determination that the motor vehicle exclusion applies, we need not address Secura’s contention that the business pursuit exclusion also applies.